representative number of species were not provided. The rejection should be withdrawn as set forth below.

1. A Deposit Was Made and Describes the Claimed Inventions

A deposit of the Asgrow Seed Company proprietary soybean cultivar 924181339, disclosed in the specification and recited in U.S. Patent No. 5,710,368, has been made with the American Type Culture Collection (ATCC), 10801 University Boulevard, Manassas, VA 20110-2209 USA. Seeds of cultivar 924181339 exhibit resistance to glyphosate. The date of deposit was May 9, 1996. The ATCC accession number is ATCC 97555. The deposit was made in accordance with all of the requirements of 37 C.F.R. 1.801-1.809, and all of the relevant deposit information was included in the specification of the pending application.

A deposit of the Asgrow Seed Company proprietary soybean cultivar 89248009206, disclosed in the specification and recited in U.S. Patent No. 6,177,617, has been made with the American Type Culture Collection (ATCC), 10801 University Boulevard, Manassas, VA 20110-2209 USA. Seeds of cultivar 89248009206 exhibit resistance to glufosinate herbicides. The date of deposit was August 20, 1997. The deposit was made in accordance with all of the requirements of 37 C.F.R. 1.801-1.809. The ATCC accession number is ATCC 209208. The corresponding deposit information has also been placed in the specification of the pending application.

The seed deposits fully describe genes encoding resistance to glufosinate and glyphosate. In particular, the Federal Circuit held in *Enzo Biochem, Inc. v. Gen-Probe Inc.* that a biological deposit describing a particular nucleic acid provides a written description of that nucleic acid, whether the nucleic acid sequence is set forth in the specification or not. 296 F.3d 1316, 1328 (Fed. Cir. 2002). Specifically, in *Enzo* the patent owner had deposited six strains of *N.*

gonorrhoeae and claimed nucleotide sequences hybridizing to the nucleic acids of these strains, but the patent application did not set forth the nucleic acid sequences of these strains in the specification. 296 F.3d 1316, 1328 (Fed. Cir. 2002). The Federal Circuit nonetheless held that "as those bacteria were deposited, their bacterial genome is accessible and, under our holding today, they are ***adequately described in the specification by their accession numbers***." (emphasis added) *Id.* The asserted non-described sequences here are provided by biological deposits in compliance with the Budapest Treaty and fully referenced in the specification and therefore are described under §112, first paragraph.

The deposits represent a description of concrete and identifiable structural characteristics defining the sequences in full compliance with the written description requirement. Further, Applicants describe genetic crossing methods that allow the introduction of these transgenes into any second soybean plant of any genotype as specifically described in the working examples of the specification. Therefore, there is no basis to allege that Applicants have not adequately described the full scope of seeds resistant to glufosinate and glyphosate in the specification, and withdrawal of the rejection is respectfully requested.

2. The Claimed Invention Is Fully Described by the Working Examples

In regard to the contention that Applicants were not in possession of the invention, it is noted that possession of the invention is directly demonstrated by the working examples, which describe the production of a soybean plant containing genes conferring resistance to the herbicides glyphosate and glufosinate, as well as a third herbicide resistance gene. As explained in the attached Declaration of Donald E. Steffen, working Example 13, in paragraphs 88-89 of the specification, describes the creation of a soybean plant comprising genes conferring resistance to glyphosate (Roundup™, "RR"), glufosinate (Liberty Link™, "LL") and ALS